

EXHIBIT 7

Plaintiff's Opposition to Motion for Summary Judgment

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

BRIGHTON OPTICAL, INC.,
et al.,
Plaintiffs,
Vs. No. 03-74974
VISION SERVICE PLAN,
Defendant.

Deposition of
CHERYL JOHNSON
Tuesday, April 12, 2005

Reported by:
SHARON CABELLO, RPR

CSR No. 3080

Job No. 48635A

INDEX

Examination by
MR. KARP

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<p>1 this case are those that are signatories to Franchise 2 Agreements with those entities? 3 A. Yes. 4 MR. RENAUD: Aren't some of them employees? 5 Isn't, for instance, Dr. Runstrom? 6 MR. KARP: I was going to get to that in a 7 moment. 8 MR. RENAUD: All right. 9 Q. MR. KARP: And do you further understand that 10 the doctors that are signatories to the Franchise 11 Agreements own all of the assets, the furniture, the 12 fixtures, the equipment and the inventory in their 13 practice and their dispensary; is that your 14 understanding? 15 A. I don't know the specifics of what they do 16 own, but it is certainly my understanding that they do 17 not control all aspects of their practice. 18 Q. Well, with all respect, that's not the 19 question I asked. 20 A. Well -- 21 Q. Is it your understanding that the Plaintiffs 22 in this case that are signatories to a Franchise 23 Agreement own all of the furniture, fixtures, 24 equipment, and inventory in their practice and their 25 dispensaries?</p> <p style="text-align: center;">Page 61</p>	<p>1 A. At some point in the past I would have seen 2 it, yes. 3 Q. Do you have an understanding of whose function 4 it is to maintain that list? 5 A. Yes. 6 Q. Would that be Janice Wilson and her employees? 7 A. Yes. 8 Q. Have you ever seen a report from Janice Wilson 9 as to the number of people, that is to say doctors, on 10 this list? 11 A. Yes. 12 Q. Is this document which we marked as Exhibit 9 13 one such report? 14 A. I don't recall seeing this report, and this is 15 not the report that I was thinking of. But I can see 16 that it appears that it was sent to me. 17 Q. Okay. So does that mean that you do not 18 recall seeing it before today? 19 A. I do not recall seeing this report before 20 today. 21 Q. And then I take it, then, it was not a 22 document on which you relied in formulating your answer 23 to Interrogatory No. 9? 24 A. No. 25 Q. Have you received other similar reports from</p> <p style="text-align: center;">Page 63</p>
<p>1 MR. RENAUD: Asked and answered. 2 MR. KARP: Respectfully disagree. I would 3 like an answer to the question. 4 Q. Are you saying you don't know that? 5 A. I said I don't know the specifics of their 6 Franchise Agreement. 7 Q. Do you understand that the Plaintiffs in this 8 case are those that are signatories to Franchise 9 Agreements with franchise companies or doctors that are 10 employed by those doctors? 11 A. That's consistent with my understanding. 12 Q. Are you also aware that there are doctors who 13 are employed by these franchise companies in locations 14 that the franchise companies themselves owns? 15 A. I don't have a detailed understanding of that 16 relationship, no. 17 Q. And you didn't when you signed this Answer to 18 Interrogatory? 19 A. I may not be understanding your question, but 20 I don't specifically see that detailed in this 21 Interrogatory. 22 Q. That's precisely correct. Which is why I am 23 asking the question. 24 Have you ever seen a list of doctors who are 25 on restricted or limited membership?</p> <p style="text-align: center;">Page 62</p>	<p>1 time to time from Janice Wilson or other people in the 2 Columbus office? 3 A. I have seen from time to time a list or number 4 of grandfathered doctors. 5 Q. Have you received a report such as this one, 6 which looks like a summary of the numbers of doctors on 7 that list? 8 A. I have not received this detailed information, 9 but I have seen a summary report of numbers of doctors. 10 Q. When was the last time you saw such a list? 11 A. Probably a couple of years ago. 12 Q. Do you know when it was created? 13 A. Probably a couple of years ago. 14 Q. Do you know the circumstances under which it 15 was created? 16 A. We were interested in how many grandfathered 17 doctors remained. 18 Q. And who is "we"? 19 A. My management staff and I. 20 Q. Why were you interested in knowing that? 21 A. Because we periodically review statistics 22 about our network so that we understand how many 23 doctors that we have, and we were interested in knowing 24 the extent to which doctors who may have been 25 originally grandfathered were still practicing.</p> <p style="text-align: center;">Page 64</p>

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<p>1 this case are those that are signatories to Franchise 2 Agreements with those entities? 3 A. Yes. 4 MR. RENAUD: Aren't some of them employees? 5 Isn't, for instance, Dr. Runstrom? 6 MR. KARP: I was going to get to that in a 7 moment. 8 MR. RENAUD: All right. 9 Q. MR. KARP: And do you further understand that 10 the doctors that are signatories to the Franchise 11 Agreements own all of the assets, the furniture, the 12 fixtures, the equipment and the inventory in their 13 practice and their dispensary; is that your 14 understanding? 15 A. I don't know the specifics of what they do 16 own, but it is certainly my understanding that they do 17 not control all aspects of their practice. 18 Q. Well, with all respect, that's not the 19 question I asked. 20 A. Well -- 21 Q. Is it your understanding that the Plaintiffs 22 in this case that are signatories to a Franchise 23 Agreement own all of the furniture, fixtures, 24 equipment, and inventory in their practice and their 25 dispensaries?</p> <p style="text-align: center;">Page 61</p>	<p>1 A. At some point in the past I would have seen 2 it, yes. 3 Q. Do you have an understanding of whose function 4 it is to maintain that list? 5 A. Yes. 6 Q. Would that be Janice Wilson and her employees? 7 A. Yes. 8 Q. Have you ever seen a report from Janice Wilson 9 as to the number of people, that is to say doctors, on 10 this list? 11 A. Yes. 12 Q. Is this document which we marked as Exhibit 9 13 one such report? 14 A. I don't recall seeing this report, and this is 15 not the report that I was thinking of. But I can see 16 that it appears that it was sent to me. 17 Q. Okay. So does that mean that you do not 18 recall seeing it before today? 19 A. I do not recall seeing this report before 20 today. 21 Q. And then I take it, then, it was not a 22 document on which you relied in formulating your answer 23 to Interrogatory No. 9? 24 A. No. 25 Q. Have you received other similar reports from</p> <p style="text-align: center;">Page 63</p>
<p>1 MR. RENAUD: Asked and answered. 2 MR. KARP: Respectfully disagree. I would 3 like an answer to the question. 4 Q. Are you saying you don't know that? 5 A. I said I don't know the specifics of their 6 Franchise Agreement. 7 Q. Do you understand that the Plaintiffs in this 8 case are those that are signatories to Franchise 9 Agreements with franchise companies or doctors that are 10 employed by those doctors? 11 A. That's consistent with my understanding. 12 Q. Are you also aware that there are doctors who 13 are employed by these franchise companies in locations 14 that the franchise companies themselves owns? 15 A. I don't have a detailed understanding of that 16 relationship, no. 17 Q. And you didn't when you signed this Answer to 18 Interrogatory? 19 A. I may not be understanding your question, but 20 I don't specifically see that detailed in this 21 Interrogatory. 22 Q. That's precisely correct. Which is why I am 23 asking the question. 24 Have you ever seen a list of doctors who are 25 on restricted or limited membership?</p> <p style="text-align: center;">Page 62</p>	<p>1 time to time from Janice Wilson or other people in the 2 Columbus office? 3 A. I have seen from time to time a list or number 4 of grandfathered doctors. 5 Q. Have you received a report such as this one, 6 which looks like a summary of the numbers of doctors on 7 that list? 8 A. I have not received this detailed information, 9 but I have seen a summary report of numbers of doctors. 10 Q. When was the last time you saw such a list? 11 A. Probably a couple of years ago. 12 Q. Do you know when it was created? 13 A. Probably a couple of years ago. 14 Q. Do you know the circumstances under which it 15 was created? 16 A. We were interested in how many grandfathered 17 doctors remained. 18 Q. And who is "we"? 19 A. My management staff and I. 20 Q. Why were you interested in knowing that? 21 A. Because we periodically review statistics 22 about our network so that we understand how many 23 doctors that we have, and we were interested in knowing 24 the extent to which doctors who may have been 25 originally grandfathered were still practicing.</p> <p style="text-align: center;">Page 64</p>

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<p>1 Q. To your knowledge were any steps ever taken to 2 specifically remove doctors from the grandfathered 3 list? 4 A. Not to my knowledge. 5 Q. Was any company wide decision made to revoke, 6 terminate the grandfather status that was conferred in 7 1995? 8 A. Not to my knowledge. 9 Q. How many lists have you ever seen of 10 grandfathered doctors? 11 A. Lists of names, or lists of numbers? 12 Q. Lists of names. 13 A. Probably two or three. 14 Q. And can you recall how it is that you came to 15 receive those two or three lists? 16 A. Is your question via what means I received it, 17 or the purpose for it? 18 Q. The purpose. 19 A. Simply to understand and update of the number 20 of doctors originally on the grandfather list who 21 remained on the grandfather list. 22 Q. To your knowledge were each of these lists 23 generated by Janice Wilson or people under her 24 supervision? 25 A. Yes.</p> <p style="text-align: center;">Page 65</p>	<p>1 understanding that Pearle Vision, as an example, has 2 corporately owned locations as well as franchise 3 locations? 4 A. I believe that's the case. But I don't know 5 the specifics of their arrangement with their doctors. 6 Q. I'm not asking you for the arrangements with 7 the doctors, I am starting with the basic. 8 Is it your understanding that Pearle Vision 9 has both franchise locations and locations that are 10 corporately owned? 11 A. That would be my understanding. 12 Q. And is it your further understanding with 13 respect to locations that Pearle Vision might 14 corporately own that there is a doctor on the premises 15 in at least some of these locations? 16 A. That would be my understanding. 17 Q. And is it further your understanding that some 18 of the doctors that practice in those corporately owned 19 locations were granted grandfather status in 1995? 20 A. I do not know the specifics of which type of 21 doctors affiliated with Pearle are on the list. 22 Q. Are you aware that there are doctors on the 23 list that are employed by companies in corporately 24 owned locations where those companies also have 25 franchise locations?</p> <p style="text-align: center;">Page 67</p>
<p>1 Q. Have you ever had any conversation with Janice 2 Wilson about the status of grandfathered doctors? 3 A. I don't recall any specific conversation, but 4 I would expect during the course of being updated the 5 couple of times that I have been over the years we 6 probably had a brief conversation about it. 7 Q. Can you recall the substance of any such 8 conversation? 9 A. It would have simply been regarding the number 10 of doctors that had originally been on the list as 11 compared to the number of doctors that would have been 12 on the list at that time. 13 Q. Looking at Exhibit 9, do you have any 14 understanding of what Janice Wilson means when she uses 15 the phrase "Doctor does not own dispensary"? 16 A. She would be referring to the fact that the 17 doctor does not own and control their practice, and the 18 dispensary is a part of their practice. 19 Q. Do you have any understanding as to whether 20 that phrase encompasses both doctors that are 21 signatories to Franchise Agreements and doctors that 22 are employed by franchise companies in locations owned 23 by franchise companies? 24 A. Can you repeat question? 25 Q. Let me phrase it this way. Is it your</p> <p style="text-align: center;">Page 66</p>	<p>1 A. That would be my understanding. 2 Q. But you don't know how many doctors are in 3 that category versus how many doctors are in the 4 category of franchisees who own the assets of their 5 practice? 6 A. I would expect that they would be the 7 franchisees that you are referring to. 8 Q. So is it your understanding that when Janice 9 Wilson reported that there were 271 doctors on the list 10 in August of 1995 under the category "Doctor does not 11 own dispensary," that that would refer to solely 12 doctors who are signatories to Franchise Agreements and 13 their employees? 14 A. That would be my understanding, but I don't 15 know the specifics. 16 MR. KARP: Let's mark the Interrogatory 17 answers as the next in order, which would be 24. 18 (Plaintiff's Exhibit 24 was marked 19 for identification.) 20 Q. MR. KARP: Can you identify this as a true 21 copy of a Declaration that you signed under the penalty 22 of perjury on December 19, 2003? 23 A. It appears to be so, yes. 24 Q. Okay. Would you like to take a moment to look 25 through the document to make sure that it is, in fact,</p> <p style="text-align: center;">Page 68</p>

1 would suggest that the Plaintiffs are not free to
 2 choose to dispense or not to their patients?
 3 A. No.
 4 Q. Do you have any information to suggest that
 5 the Plaintiffs in this case are not free to choose
 6 whether to advertise or not?
 7 A. No.
 8 Q. Do you have any personal knowledge regarding
 9 the day-to-day, week-to-week, month-to-month
 10 relationship between any of the Plaintiffs in this case
 11 and the companies with which they have signed Franchise
 12 Agreements?
 13 A. No.
 14 Q. Is the standard under Condition "E" whether or
 15 not the doctor actually has control on a day-to-day
 16 basis of their practice and their dispensary?
 17 MR. RENAUD: Object to the form of the
 18 question.
 19 THE WITNESS: Can you repeat the question,
 20 please.
 21 MR. KARP: Could you read it back, please. We
 22 will see if it's a good question.
 23 (Record was read by the reporter.)
 24 THE WITNESS: I don't know what you mean by
 25 "standard." If what you are asking me is does

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1 Condition "E" provide that doctors must own and
 2 control, then the answer is yes.
 3 Q. MR. KARP: That wasn't my question.
 4 A. Then I don't understand your question.
 5 Q. I will try to rephrase it.
 6 Under Condition "E" is it a fact that VSP
 7 requires that the doctor actually have day-to-day
 8 control of their practice including their dispensary?
 9 A. Yes.
 10 Q. Now. Can I direct your attention, please, to
 11 paragraph 10 of your Declaration. It begins at the
 12 bottom of page 3.
 13 Now, in the second sentence you say that "VSP
 14 believes that doctors who actually own their own
 15 practices as well as the dispensaries are better
 16 positioned to provide the kind and level of care that
 17 VSP strives to offer its members."
 18 Do you see that sentence?
 19 A. Yes.
 20 Q. Now, I think you earlier testified in this
 21 deposition that there is no dispute that the Plaintiffs
 22 in this case actually own their practices; is that
 23 right?
 24 MR. RENAUD: Well, the testimony will speak
 25 for itself.

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1 THE WITNESS: I don't recall saying that.
 2 Q. MR. KARP: Do you know whether or not the
 3 Plaintiffs in this case actually own their practices?
 4 MR. RENAUD: All the Plaintiffs, Counsel?
 5 MR. KARP: Yes.
 6 THE WITNESS: I don't know to what extent they
 7 own their practices. But I don't believe that they
 8 control their practices.
 9 Q. MR. KARP: And that belief is based upon the
 10 Legal Department's review of the Franchise Agreement,
 11 correct?
 12 A. It's based upon my staff's review of the
 13 Franchise Agreement with Legal input.
 14 Q. Now, when you say in the sentence that it is
 15 VSP's belief that doctors who own their practices are
 16 better positioned to provide the kind of level of care
 17 that VSP strives to offer, is there data that backs up
 18 that belief?
 19 A. I don't know that I would say data, but we
 20 have conducted studies -- or a study that I am aware
 21 of, and certainly anecdotally have received complaints
 22 from our members who may have gone out of network that
 23 would reinforce our belief.
 24 Q. But this is a belief, is it not, it's not a
 25 statement, correct?

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1 A. It's a belief.
 2 Q. And you said a moment ago "We did a study."
 3 Is this the study to which you refer?
 4 A. It looks like it.
 5 Q. Do you want to take a moment to assure
 6 yourself that it is?
 7 A. Uh-huh, yes.
 8 Q. And is this the study you referred to a moment
 9 ago that you say supports the belief that you advance
 10 in the second sentence of paragraph 10?
 11 A. It's an example of information that supports
 12 our belief, but it's not the basis of our belief.
 13 Q. I didn't ask you that. I asked you whether or
 14 not it supports the belief that is expressed in the
 15 second sentence of paragraph 10.
 16 A. It helps support the belief.
 17 Q. Are there any other documents, reports or
 18 studies or similar documents that also support the
 19 belief as expressed in the second sentence of
 20 paragraph 10?
 21 A. Not that I am aware of.
 22 Q. Did VSP commission an outside firm to do this
 23 study?
 24 A. I believe so. I was not involved in this
 25 study.

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22 (Pages 85 to 88)

<p>1 Q. Who would have been responsible for 2 commissioning this study? 3 A. I believe that was conducted by the Marketing 4 Department. 5 Q. And who is the head of the Marketing 6 Department? 7 A. Kate Renwick-Espinosa. 8 Q. Do you know whether any similar studies have 9 been done since the publication of this one? 10 A. Not that I am aware of. 11 Q. Are you familiar with this report? 12 A. Not at a detail level, it wouldn't be my 13 function to review it and analyze it. I would get high 14 level findings reported to me. 15 Q. Did you have the study available to you when 16 you answered these Interrogatories in December of 2003? 17 A. I did not analyze or review the study before I 18 signed the Interrogatory, but I was aware of the 19 findings at a high level of the study. 20 Q. When you say at a high level, you mean in a 21 summary fashion? 22 A. Yes. 23 Q. When you said before you signed the 24 Interrogatory, did you mean that you were aware of the 25 -- or have a summary of the findings of this report</p> <p style="text-align: center;">Page 89</p>	<p>1 belief that doctors who own their dispensaries and 2 their practices are in a better position to provide the 3 kind and level of care that VSP strives to offer? 4 A. Not that I am aware of. 5 Q. Do you have any documents, reports or 6 information that would tend to show that doctors who 7 own their practices as well as their dispensaries 8 actually deliver better care than doctors who don't own 9 their practices and their dispensaries? 10 A. No. 11 Q. Can I direct your attention to item a. on 12 page 4. Here in the first sentence you say that "VSP 13 wants to be sure that the person with whom it has a 14 contractual relationship - the Member Doctor - is, in 15 fact, the person making decisions regarding the 16 practice and services rendered to the patients." 17 Have I accurately quoted you? 18 A. Yes. 19 Q. Do you have any documents or information to 20 suggest that any of the Plaintiffs in this case are not 21 actually the persons making the decisions regarding 22 their practices and services rendered to the patients? 23 A. No. 24 Q. Let me direct your attention to paragraph b. 25 on page 4. In it you say that "VSP is concerned that</p> <p style="text-align: center;">Page 91</p>
<p>1 before you signed the Declaration? 2 A. Yes. 3 Q. Okay. Let's mark the study as the next 4 exhibit in order. 5 (Plaintiff's Exhibit 25 was marked 6 for identification.) 7 Q. MR. KARP: Now, in that second sentence of 8 paragraph 10 you say that doctors who own their 9 practice as well as the dispensaries are better 10 positioned to provide the kind and level of care that 11 VSP strives to offer their members. 12 Why did you use the words "better positioned"? 13 A. Because VSP strives to insure that our members 14 receive the highest possible quality of care, and we 15 believe that that care is best delivered by private 16 practice doctors. 17 Q. And is that belief supported by any studies, 18 documents, information or reports? 19 A. Other than the report that we just discussed? 20 Q. Are you saying the report we just discussed 21 supports that conclusion? 22 A. I believe that the report's findings help 23 support the conclusion. 24 Q. Okay. Are there any other reports, studies, 25 documents or information that would help support VSP's</p> <p style="text-align: center;">Page 90</p>	<p>1 if a Member Doctor does not have ownership and complete 2 control of both aspects (the practice and the 3 dispensary), then the actual owner could place 4 financial or other pressures on the Member Doctor to 5 perform more expensive examinations than required." 6 Have I quoted you accurately? 7 A. Yes. 8 Q. Do you have any evidence or documents to 9 suggest that either Pearle Vision or DOC Corporation 10 have ever placed financial pressures -- excuse me, 11 financial or other pressures on VSP Member Doctors to 12 perform more expensive examinations than are required? 13 A. No. 14 Q. Do you have any evidence or documents to 15 suggest that Pearle Vision or DOC has ever placed 16 pressure on the Member Doctor to provide a less 17 comprehensive examination than may be appropriate? 18 A. No. 19 Q. Do you have any documents or evidence to 20 suggest that franchisee optometrists of Pearle Vision 21 or DOC in general provide less comprehensive 22 examinations than may be appropriate? 23 A. No. 24 Q. Do you have any documents or evidence to 25 suggest that Pearle Vision or DOC Corporation have ever</p> <p style="text-align: center;">Page 92</p>

<p>1 placed financial or other pressures on a Member Doctor 2 to prescribe eyeglasses that are not required? 3 A. No. 4 Q. Do you have any documents or evidence to 5 suggest that either Pearle Vision or DOC has placed 6 financial or other pressures on a VSP Member Doctor or 7 any of its franchisees to prescribe an inferior set of 8 eyeglasses? 9 A. No. 10 Q. Do you have any documents or evidence to 11 suggest that either Pearle or DOC has ever placed 12 financial or other pressures on any of its franchisee 13 optometrists to push extras on the patient? 14 A. No. 15 Q. What is an extra? 16 A. It could be additional options for a pair of 17 eyeglasses, such as certain coatings or special types 18 of lighter lenses. 19 Q. Do you have any specific evidence or documents 20 that would suggest that any Member Doctor that does not 21 have ownership and complete control of the practice and 22 the dispensary has ever done any of the things that are 23 listed in item b. on this page? 24 A. Anecdotally we have been made aware of 25 instances in which this has happened, but I don't have</p> <p style="text-align: center;">Page 93</p>	<p>1 A. We have received complaints from members in 2 the past that are consistent with the examples in this 3 document. 4 Q. And did any of those complaints involve 5 locations that were franchised and owned by 6 optometrists of Pearle Vision or DOC? 7 A. I don't know. 8 Q. Can I direct your attention, please, to the 9 top of page 5. 10 You testified earlier that there are a number 11 of doctors on the grandfathered list who are affiliated 12 with a franchise; is that correct? 13 A. Yes. 14 Q. Do you have any documents or evidence to 15 suggest that any of those doctors are not responsible 16 to VSP and to the patient/member for the quality of 17 service and materials they provide? 18 A. No. 19 Q. In paragraph d. you state that "VSP believes 20 that an eye doctor who owns and controls his or her 21 practice" -- let me strike that and start again. 22 In subparagraph d. you state that "VSP 23 believes that an eye doctor who owns and controls his 24 or her own practice is more likely to give excellent 25 service."</p> <p style="text-align: center;">Page 95</p>
<p>1 any specific report or data. 2 Q. How many reports have you received of that 3 kind in the 11 years you have been employed at VSP? 4 A. I don't know specifically. 5 Q. Has any report, study or examination been made 6 of those anecdotal reports? 7 A. Not that I am aware. 8 Q. And there are no statistics compiled anyplace 9 of it; am I right? 10 A. Not that I am aware of. 11 Q. Can I direct your attention, please, to item 12 c. on the same page. 13 Do you have any documents or evidence to 14 suggest that any franchisee optometrist of Pearle 15 Vision or DOC has ever turned dispensing 16 responsibilities over to a non Member Doctor? 17 A. No. 18 Q. Are you aware of any specific instance 19 involving any franchisee optometrist at Pearle Vision 20 or DOC where the VSP member was caught in the middle as 21 you describe it in this subparagraph c.? 22 A. No. 23 Q. Was there a specific incident or event that 24 caused you to give the Court this example in 25 subparagraph c.?</p> <p style="text-align: center;">Page 94</p>	<p>1 Do you have any documents or information to 2 support that statement? 3 A. No. 4 Q. You further state that VSP believes that an 5 eye doctor who owns and controls his or her practice is 6 more likely to exercise independent professional 7 judgment unimpeded by commercial considerations. 8 Do you have any documents or information to 9 support that statement? 10 A. I don't have documents, but on -- but really 11 on both of these phrases we monitor very closely member 12 satisfaction with our doctors, and we continue to 13 evaluate their high satisfaction, and we also compare 14 it to members who go outside of our network, and the 15 satisfaction is not as high. 16 Q. So -- and who performed those studies or 17 surveys? 18 A. We have a department within the company that 19 monitors satisfaction with all publics called the 20 Customer Delight Department. 21 MR. RENAUD: I think so. 22 Q. MR. KARP: Has VSP ever done any comparative 23 study of satisfaction as between VSP Member Doctors and 24 franchised optometrists of Pearle Vision? 25 A. Not that I am aware of.</p> <p style="text-align: center;">Page 96</p>